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8 TWIN PEAKS SOFTWARE INC.

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12  
13 TWIN PEAKS SOFTWARE INC.

14 Plaintiff,

15 v.

16 RED HAT, INC. AND GLUSTER, INC.,

17 Defendants.

Case No. 5:12-cv-00911-RMW

**PLAINTIFF TWIN PEAKS SOFTWARE  
INC.'S ANSWER TO DEFENDANTS RED  
HAT, INC.'S AND GLUSTER, INC.'S  
COUNTERCLAIMS TO PLAINTIFF'S FIRST  
AMENDED COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

Plaintiff, Twin Peaks Software Inc. (“Twin Peaks”) responds to the counterclaims of Defendants Red Hat, Inc. and Gluster, Inc. (collectively, “Red Hat” or “Defendants”) asserted in Defendants’ Answer and Counterclaims to Plaintiff Twin Peaks Software Inc.’s First Amended Complaint for Patent Infringement (Dkt. No. 28) as follows:

### **RED HAT’S COUNTERCLAIMS FOR DECLARATORY RELIEF**

#### **Nature of Action**

25. Twin Peaks admits Paragraph 25 of the Counterclaims.

#### **Parties**

26. Twin Peaks admits Paragraph 26 of the Counterclaims.

27. Twin Peaks admits Paragraph 27 of the Counterclaims.

28. Twin Peaks admits Paragraph 28 of the Counterclaims.

#### **Jurisdiction and Venue**

29. Twin Peaks admits Paragraph 29 of the Counterclaims.

30. Twin Peaks admits Paragraph 30 of the Counterclaims.

31. Twin Peaks admits Paragraph 31 of the Counterclaims.

### **COUNT 1**

#### **(Declaratory Judgment of Non-Infringement)**

32. Twin Peaks incorporates by reference its responses to Paragraphs 26-31 of the Counterclaims as if fully set forth herein.

33. Twin Peaks admits Paragraph 33 of the Counterclaims.

34. Twin Peaks admits that Red Hat requests, pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, a declaration of the Court that Red Hat has not infringed and does not currently infringe any claim of the ’439 Patent, either directly, contributorily, or by inducement. Twin Peaks denies the remaining allegations in Paragraph 34 of the Counterclaims.

35. Twin Peaks denies Paragraph 35 of the Counterclaims.

### **COUNT II**

#### **(Declaratory Judgment of Invalidity)**

36. Twin Peaks incorporates by reference its responses to Paragraphs 26-35 of the

Counterclaims as if fully set forth herein.

37. Twin Peaks admits Paragraph 37 of the Counterclaims.

38. Twin Peaks admits that Red Hat requests, pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, a declaration of the Court that the '439 Patent is invalid. Twin Peaks denies the remaining allegations in Paragraph 38 of the Counterclaims.

39. Twin Peaks denies Paragraph 39 of the Counterclaims.

**PRAYER FOR RELIEF**

WHEREFORE, Twin Peaks prays for judgment and seeks relief against Defendants as follows:

- A. That all relief requested by Twin Peaks in its First Amended Complaint for Patent Infringement be granted.
- B. That all relief requested by Defendants in their Answer and Counterclaims be denied and that Defendants take nothing by way of Counterclaims.
- C. That Defendants' Counterclaims be dismissed in their entirety with prejudice.
- D. That the Court grant Twin Peaks further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Twin Peaks hereby requests a trial by jury of any and all issues so triable that arise out of or relate to Defendants' Counterclaims.

1 Dated: August 23, 2012

Respectfully submitted,

3 By: /s/ Richard C. Lin

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